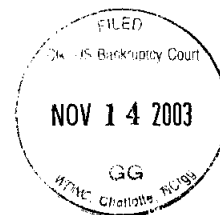


UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division



In Re:) Case No. 01-31485
) Chapter 11

LAKE NORMAN BREWING
COMPANY, L.L.C.,

Debtor.

JUDGMENT ENTERED ON NOV 14 2003

LAKE NORMAN BREWING
COMPANY, L.L.C.,

Plaintiff,

Adv. Proc. 02-3162

v.

WILLIAM HULLEY, III, and
YVONNE HULLEY

Defendants.

ORDER

This matter is before the court upon the Motions for Summary Judgment of plaintiff, Lake Norman Brewing Company, L.L.C. ("Lake Norman Brewing Company") and defendant, Yvonne Hulley, and the Motion to Dismiss of defendant, William Hulley, III. After consideration of the motions and the arguments of counsel, the court has concluded that there are genuine issues of material fact, so the motions must be DENIED.

1. The debtor, Lake Norman Brewing Company, brought this action to collect money allegedly due and unpaid stemming from a capital call made by the debtor. Specifically, the debtor alleges that Yvonne Hulley owes \$32,130.00 individually due to her 4.5%

ownership interest in the debtor and that Yvonne and William Hulley owe \$160,357.26 jointly and severally due to their 23.127% ownership interest in the debtor.

2. In her Motion for Summary Judgment, Yvonne Hulley primarily contends that: (1) the plaintiff's complaint should be dismissed because the plaintiff did not follow the requirements of its Operating Agreement relating to member meetings, including notice and quorum requirements of member meetings to approve capital calls; (2) she is not responsible for the capital call related to her purchase of other members shares because the purchase of their interests did not make her a member with respect to those shares; and (3) she is not responsible for any capital call because she has never signed the Operating Agreement or any other document obligating her to make the contribution.

3. William Hulley moved to dismiss the plaintiff's complaint on the basis that Yvonne Hulley was solely responsible for the purchase of the additional 23.127% interest in the debtor. Thus, he argues that his interest was limited to his 7.418% ownership interest. In addition, William Hulley contends that to the extent he had any obligation to the plaintiff, it was satisfied by a payment in the amount of \$52,964.52. Finally, William Hulley essentially adopted the arguments of Yvonne Hulley summarized above.

4. At the hearing on these motions, William Hulley offered deposition testimony and other evidence which contain matters outside the pleadings. Thus, the court will treat Mr. Hulley's Motion to Dismiss as one for summary judgment and will dispose of the motion as provided in Rule 56 of the Federal Rules of Civil Procedure.

5. Summary judgment is appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." See Fed.R.Civ.P. 56(c). A fact becomes "material" if it "might affect the outcome of the suit under the governing law" See Equal Employment Opportunity Comm'n v. Dollar Gen. Corp., 252 F.Supp.2d 277, 282 (M.D.N.C. 2003) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510, 91 L.Ed.2d 202, 211 (1986)). In addition, a genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." See id. (citation omitted). Thus, the court can only enter summary judgment for the moving party when "'the entire record shows a right to judgment with such clarity as to leave no room for controversy and establishes affirmatively that the [non-moving] party cannot prevail under any circumstances.'" See id. (citing Campbell v. Hewitt, Coleman & Assocs., Inc., 21 F.3d 52, 55 (4th Cir. 1994)).

6. The court finds that there is a significant issue of material fact, so the motions must be denied. One of the key issues in this case involves a determination of the ownership interests of Yvonne and William Hulley, and the evidence on this issue is extremely conflicting.

7. All of the parties agree that Yvonne had an initial ownership interest of 4.5%, and William had an initial ownership interest of 6.75%. The dispute lies with respect to the remaining 23.127%.

8. The plaintiff contends that Yvonne and William Hulley own those shares jointly. In support of this position, the plaintiff refers to four Assignments and Bills of Sale of Membership Interest in Lake Norman Brewing Co., L.L.C. which relate to the transfer of the interests of Constance Broughton, Lou Milano, Jim Hall, and John Bisson. Each of these Assignments was executed by both William and Yvonne Hulley. With respect to the remaining 3.087% interest, which interests had been previously reacquired by the debtor, the plaintiff contends that William and Yvonne Hulley paid \$30,870.00 for those shares from a joint account titled "RN Consultants." Finally, the plaintiff relies on an October 23, 1998, letter from Ray Renshaw, Yvonne Hulley's brother and a Member/Manager of the debtor, to the Charlotte Certified Development Corporation in which he indicates that William and Yvonne Hulley will be jointly purchasing the 20.04% ownership

interest of Constance Broughton, Lou Milano, Jim Hall, and John Bisson. In contrast, Ray Renshaw wrote a letter to Yvonne Hulley on December 5, 1998, in which he confirmed the agreement between the debtor and Ms. Hulley for the purchase of the ownership interests of Milano, Broughton, Bisson, and Hall.

9. In her Motion for Summary Judgment, Yvonne Hulley asserts that she individually purchased the interests of Constance Broughton and John Bisson and jointly purchased the interests of Lou Milano and Jim Hall with her husband, William Hulley. With respect to the additional 3.087% ownership, Yvonne Hulley disputes the plaintiff's claim that Yvonne and William Hulley purchased those shares. Rather, Yvonne contends that the plaintiff inappropriately calculated her percentage ownership by increasing it on a pro rata basis due to the debtor's re-acquisition of the ownership interests of three former members.

10. William Hulley simply contends that he did not own any shares jointly with Yvonne Hulley. Thus, his obligation, if any, related to his ownership interest of approximately 7.418%. In support of his argument, William Hulley cites the deposition transcript of Ray Renshaw in which he testified that both he and the debtor understood and operated as if Yvonne Hulley purchased the shares of Milano, Broughton, Bisson, and Hall individually.

11. The determination of the ownership interests of Yvonne and William Hulley is one of the key issues in this case, and it is

clear, given the conflicting evidence, that a reasonable jury could find for either the plaintiff, Yvonne, or William Hulley on this issue. Thus, there is a genuine issue of material fact and the parties respective motions for summary judgment are DENIED.

It is therefore **ORDERED** that:

1. Lake Norman Brewing Company, L.L.C.'s Motion for Summary Judgment is DENIED;
2. Yvonne Hulley's Motion for Summary Judgment is DENIED;
and
3. William Hulley, III's Motion to Dismiss is DENIED.



George R. Hodges
United States Bankruptcy Judge